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IN THE

Supreme Court of the United States

OCTOBER TERM, 1954

No. 183

PAUL A. PIGOTT, EUGENE E. MURPHY, WILLIAM F. MENARD, FRANK R. McNABB, VINCENT W. BAUMIA, ERNEST E. LAMB, HAROLD HATCHER, JR., THOMAS R. HALL, PAUL EVANS, HENRY J. BARROW, and MILTON E. STONE,
Petitioners,

v.

DETROIT, TOLEDO & IRONTON RAILROAD, a Delaware Corporation, and BROTHERHOOD OF RAILROAD TRAINMEN

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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IN THE

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No. .....

PAUL A. PIGOTT, EUGENE E. MURPHY, WILLIAM F. MENARD, FRANK R. McNABB, VINCENT W. BAUMIA, ERNEST E. LAMB, HAROLD HATCHER, JR., THOMAS R. HALL, PAUL EVANS, HENRY J. BARROW, and MILTON E. STONE,
Petitioners,

v.

DETROIT, TOLEDO & IRONTON RAILROAD, a Delaware Corporation, and BROTHERHOOD OF RAILROAD TRAINMEN

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Petitioners pray that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Sixth Circuit entered in the above entitled case on March 4, 1955.

OPINION BELOW

The opinion of the Court of Appeals is reported in 221 F. 2d 736, (*infra* pp. 2a-12a). The opinion of the District Court is reported at 116 F. Supp. 949 (E. D. Mich.) and is found in (R. 60A).

JURISDICTION

The judgment of the Court of Appeals (App., ~~10a~~ 1a) was entered on March 4, 1955. Judge Allen wrote a dissenting opinion. A timely petition for rehearing was filed by the petitioners, and this petition was denied on March 31, 1955. Judge Allen felt rehearing should be granted. The jurisdiction of this Court is invoked under 28 U. S. C. 1254(1).

QUESTIONS PRESENTED

1. Whether the District Court under the authority of 28 U. S. C. A. Sections 1331 or 1337 has jurisdiction to entertain petitioners' complaint seeking to prevent their discharge from employment where they claim that their rights under the Fifth Amendment (due process clause) have been violated as well as their rights under the Railway Labor Act, 45 U. S. C. A. 151, *et seq.*, by a decision of a System Board of Adjustments provided for by 45 U. S. C. A. 153 Second, which Board, composed of two members, one from the carrier, and the other representing the union hostile to the petitioners and to the rival union in which they hold membership, and which in its endeavor to have petitioners discharged from employment, prosecutes and presides at a hearing in reference to its own complaint lodged against petitioners.

2. Whether a dispute between a union representative and an employee of a railroad carrier is such a dispute cognizable under the provisions of 45 U. S. C. A. Sec. 153 to be determined only by an Adjustment Board.

3. Whether the District Court under the authority of 28 U. S. C. A. Sections 1331 or 1337 has jurisdiction to entertain petitioners' complaint in which they seek to prevent their discharge from employment and the enforcement of a union shop agreement presumably entered into under authority of 45 U. S. C. A. 152 Eleventh; which agreement they allege in their complaint as being invald because of provisions unauthorized therein; namely—that the labor organization chosen to represent them as employees of a railroad carrier, under the provisions of 45 U. S. C. A. Section 152 Fourth, shall initiate proceedings against them, seeking their discharge from employment, and that as to the employee desiring a hearing, his discharge shall be suspended until a final decision of a two-man board and for ten days thereafter.

4. Where Congress by the provision of the Railway Labor Act, Sections 151(a) and 152 ~~Fourth~~ Eighth of 45 U. S. C. A., has treated the term "conditions of employment" and the term "working conditions" separately, and as to the former term, has forbidden contracts, nullified those entered into prior to the Act, and as to the latter term, has provided by the provision of Sec. 153 (i) for an Adjustment Board to resolve disputes between employee and employer only, not resolved in conference—Can such Adjustment Board assume jurisdiction to resolve a controversy between a union representative and an employee in reference to union security as a condition of "continued" employment under the Amendment to the Act, 45 U. S. C. A. 152 Eleventh?

5. Where Congress by the provisions of the Railway Labor Act has refrained from defining a union "national in scope" but by the provisions of 45 U. S. C. A. 151 (a) and 152 Fourth has provided for the right of employees to organize, join unions of their own choosing, has forbidden limitation upon their freedom of association, has provided for their complete independence in matters of self organization, and by Section 151 Fifth has provided "nor shall the jurisdiction or powers of such employee organization be regarded as in any way limited or defined by the provisions of this Act;" can an adjustment board whose own jurisdiction is limited to disputes between employee and employer only, assume jurisdiction to define or limit the geographical jurisdiction of an employee organization as to whether it is organized as national in scope, or is that subject left for judicial determination in a request for declaratory judgment in a controversy where the determination of such status becomes important?

6. Has the Court misapplied a federal statute, namely, 45 U. S. C. A. 153 (f) to the case at bar, by holding that the qualification necessary for an organization to be recognized as a union national in scope in order for members of such union to be entitled to the exemption from joining the bargaining representative's union under 45 U. S. C. A. 152 Eleventh (c) as employees of a railway carrier, can only be accomplished by such union participating in the selection of members of the National Adjustment Board?

STATUTES INVOLVED

The constitutional provision and pertinent statutes which are listed below are printed in the appendix herein (Appendix 13a-22a).

Fifth Amendment to Constitution (*infra* 13a).
28 U. S. C. A. 1331 (*infra* 13a).
28 U. S. C. A. 1332 (*infra* 13a).
28 U. S. C. A. 1337 (*infra* 13a).
45 U. S. C. A. 151 Fifth—Railway Labor Act (*infra* 14a).
45 U. S. C. A. 151 (a) Railway Labor Act (*infra* 15a).
45 U. S. C. A. 152 Fourth, Fifth, Eleventh (*infra* 16a).
45 U. S. C. A. 153 (*infra* 18a).

STATEMENT

Petitioners for themselves and others as a class action in their complaint in the District Court for the Eastern Division of Michigan alleged:

That they are resident of Michigan and employees of the defendant Railroad (a Delaware corporation) doing business in Michigan as a railroad carrier engaged in interstate commerce,[1] and sought an injunction to prevent their

[1] Original jurisdiction of the District Court was invoked in their complaint under the provisions of 28 U. S. C. A. 1331, being a civil action involving upwards of $3,000.00, exclusive of interest and costs, and arises under the Constitution (5th Amendment) and the Railway Labor Act 45 U. S. C. A. 151, *et seq.*, and under 28 U. S. C. A. 1332 because of diversity of citizenship, being a civil action involving more than $3,000.00, the defendant railroad carrier being a Delaware corporation, the defendant Brotherhood being a labor organization with

(Continued on next page)

immiment discharge from employment and for a declaratory judgment (R. 36A).[2-3] They alleged that the notice of discharge resulted from a direct proceeding initiated against them by their own Statutory Representative, the defendant Brotherhood of Railway Trainmen seeking their discharge who wrongfully claimed that they were not in compliance with a union shop agreement. That they requested a hearing in regard to the Brotherhood's request that they be discharged from employment. The Brotherhood sat in judgment at the hearing in reference to its own complaint against them, as a member of a congressionally ordained System Board of Adjustments. This Board was composed of two men; viz—one from the Carrier and the other from the Brotherhood, namely, its chairman who sought their discharge on behalf of the Brotherhood, and who at the hearing also prosecuted the Brotherhood's own complaint against them; that they did not and could not receive a fair and impartial hearing before a partial and biased Board as that Board was thus constituted. All of this was done without propriety or sanc-

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(Continued from preceding page)

principal offices in Cleveland, Ohio, whereas all petitioners are residents of Michigan; jurisdiction was further invoked under 28 U. S. C. A. 1337, this being a civil action arising under an Act of Congress regulating commerce, namely the Railroad Labor Act, 45 U. S. C. A. 151, *et seq.*

[2] References to "R" refer to the appendix of plaintiff-appellants as filed in the Court of Appeals.

[3] The defendant Brotherhood was allowed to intervene in the proceedings, and filed a motion to dismiss the complaint. Petitioners were permitted by the Court to file an Amended Complaint wherein it made both the Brotherhood and the Carrier parties defendant. It was stipulated by the parties that the Motion to Dismiss shall apply to the Amended Complaint without the necessity of the Brotherhood filing a new motion (R. 60a). All references to petitioners' complaint refer to the Amended Complaint (R. 38a).

tion of law in administering the provisions of the Railroad Labor Act; that the controversy did not grow out of a dispute between employee and employer, nor did it involve working conditions as that term is treated in the Act, nor was it a jurisdictional dispute between two rival unions.

Petitioners claimed that their rights—loss of their jobs—have been violated under the due process clause of the Fifth Amendment to the Constitution (R. 44a), as well as their rights granted to them as employees under the provisions of the Railway Labor Act, a federal statute regulating commerce, 45 U. S. C. A. 151 *et seq.* (*infra* 14a).

Petitioners alleged that the Brotherhood, their Union Representative, is a rival labor organization hostile to them and to the union in which they hold membership (R. 45a-46a), viz., United Railway Operating Crafts (herein referred to as U. R. O. C.) which is a union national in scope with local unions affiliated with it on sixty-one railroads in thirty-eight states; (R. 39a) that instead of representing them, as well as all other employees of their craft or class, the Brotherhood discriminated against them, acted arbitrarily towards them; that it was biased because petitioners were members of a rival organization. That the Brotherhood's motive and conduct was to prevent employees from organizing or joining employee associations of their own choosing with safety (fear of losing their jobs) as granted to employees by Congress. Section 151(a) Section 152 Fourth, but instead it was creating a monopoly of workers to be recruited only from its own membership (R. 43a)[4]

[4] In the Brotherhood's motion to intervene (R. 13a), the Brotherhood states that it is the real party in interest—that it has a vital interest in the outcome of this litigation inasmuch as it and its membership will be "materially and substantially" affected by its right to insist upon the enforcement of the agreement and the discharge of the plaintiffs.

Petitioners alleged that the proceeding initiated against them by the Brotherhood stems from an invalid union shop agreement, the provisions of which and in its effect, practice, and administration goes beyond the authority in the union shop amendment to the Act. 45 U. S. C. A. 152 Eleventh. That under the provisions of said paragraph Eleventh of the Act, petitioners' right not to become a member of the Representative Organization (Brotherhood in this case) is expressly sanctioned if the employee holds or acquires membership in a union national in scope admitting to membership employees of the craft and class designated. The petitioners allege that by their membership in U. R. O. C. that they have satisfied the requirement of the Amendment in not becoming members of the Brotherhood (R. 41a).

Petitioners further stated that the System Board of Adjustments set up in the union shop agreement was not a board sanctioned by the Amendment to the Act, *Sec. 152 Eleventh,* (*infra* 16a) and that it had no authority to hear a controversy between a union and an employee, nor to determine the geographical status of a rival union as to whether it was organized as national in scope. That such Board, set up under authority of Sec. 153 Second was limited under Sec. 153 First (i) to hear only disputes between employee and employer. That the agreement without authority of the Act provided that the Brotherhood, chosen to represent the employees, should initiate proceedings seeking the discharge of the employee. That the agreement by its provisions also anticipated an unfavorable decision for the employee by providing therein that if the employee notifies the Board that he desires a hearing his discharge shall be suspended until the final decision of said Board and for a period of ten days thereafter (R. 52a).

In addition to injunctive relief, the petitioners prayed that the court find that the agreement that they alleged in their complaint was invalid (R. 41a), be decreed to be unenforceable or inoperative; that the proceedings before the Board were irregular, arbitrary, against public policy, and its findings unenforceable. Petitioners also prayed for a declaratory judgment determining that United Railway Operating Crafts, in which they hold membership, is a labor organization National in scope, organized in accordance with the Act admitting to membership employees of the craft and class referred to in the Act and that the court hold that neither they nor any other employee can be discharged solely because of membership in said union (46a).

Court Decision

The Court dismissed petitioners' complaint for want of jurisdiction upon a motion to dismiss filed by the Brotherhood, that the petitioners' complaint was not justiciable by a Court.

In a divided opinion, the Court of Appeals affirmed the judgment of the District Court upon the opinion of the District Judge. Judge Allen of the Court of Appeals wrote a dissenting opinion (*infra* 2a-12a).

The majority opinion expressly stated "It is conceded that U. R. O. C., in which petitioners hold membership, is organized in accordance with the Act" * * * "The Railway Labor Act in providing for union shop agreements in *45 U. S. C. A. Sec. 152 Eleventh* (*infra* 16a) nevertheless makes no provision for ascertaining whether or not a labor organization is national in scope; nor is any procedure provided in said section whereby employees of a union may avail themselves of the exception to the necessity of

joining the bargaining organization on the ground that their union is national in scope." The Court in adopting the opinion of the District Judge stated, "There is as we have indicated a natural conflict of interest between U. R. O. C. and the labor representatives on the Board."

Notwithstanding the above findings, the Court of Appeals in adopting the opinion of the District Court, the petitioners feel, misapplied the provisions of the Act by invoking the provisions of 45 U. S. C. A. Sec. 153 (f), (*infra* 19a) the subject of which is not involved in the petitioners' complaint in this suit, and which provision has to do solely with another type of controversy between different parties, and under different circumstances, namely, "In the event that a dispute arises as to the right of any national labor organization to participate as per paragraph (c) of this section in the selection and designation of the labor members of the Adjustment Board * * *"

Without any sanction from Congress, the majority in its opinion, nevertheless, held that a labor organization desirous of qualifying for the exception to the union shop requirement must also participate in the adjustment board machinery before it can obtain the required stamp of approval as an organization "national in scope." That the plaintiffs (petitioners) should have insisted that U. R. O. C. so participate or should have protected their interests by joining the Brotherhood.

Paradoxically, the majority in its opinion also stated, "a labor organization cannot of course resort to the specific administrative machinery relating to the selection of members of the National Adjustment Board, for the limited purpose of establishing that its members are entitled to the exception to the union shop requirement."

In the dissenting opinion, Judge Allen rejected the theory of the majority and stated, "That to apply the technical administrative provisions of Section 153 First, (*infra* 18a) relating to unions and management to the simple but all important guarantees of Section 152 Eleventh, on behalf of employees, nullifies the Congressional intent and constitutes judicial legislation." That the question in this case is not how the National Adjustment Board shall be constituted or whether U. R. O. C. shall have a member on the Board "The question here is whether the appellants (petitioners) shall be deprived of their livelihood. Their right not to be deprived of it if U. R. O. C. comes within the classification of Section 152 Eleventh (c) (*infra* 17a) is a valid statutory right falling within the general jurisdiction of the federal court under Title 28, Section 1331," * * * to be protected by the examination of a court free from bias or conflict in interest and safeguarded by judicial procedure * * *. That the District Court should hear the evidence, construe the meaning of the phrases "national in scope," "organized in accordance with the Act" and determine whether U. R. O. C. comes within that classification." Judge Allen cited *N. L. R. B. v. Highland Park Mfg. Co.*, 341 U. S. 321 to show that it was appropriate for a federal court to determine whether a labor organization is national in scope.

REASONS FOR GRANTING THE WRIT

The case raises important questions of wide import under the Constitution and laws of United States and Railway Labor Act, 45 U. S. C. A. 151 *et seq.* Its resolution will have immediate importance far beyond the particular facts and the parties involved, for it involves the plans hopes and aspirations of a great many people

throughout the country. There have been many scores of railroad men throughout the country who have lost their jobs, it is contended, because of the misapplication of Sec. 152 Eleventh, and there are several thousand whose security in their jobs is uncertain. Some of these employees of railroads have worked for carriers over thirty years; their seniority and other benefits being wiped away, and as to others, their jobs are in jeopardy. Their right as employees of railroad carriers, and as provided by Congress in the Railway Labor Act, Sec. 151a-152 Fourth, to organize and join without limitation labor unions of their own choosing, have been frustrated by having courts relegate them to an Adjustment Board or to a System Adjustment Board, the labor members of which boards are rival and hostile to the union in which many of these employees hold membership. The inevitable result is the loss of their jobs.

This action stems from the construction given to 45 U. S. C. A. Sec. 152 Eleventh (*infra* 16a) which section was enacted January 10, 1951 (union shop amendment). The petitioners as well as several thousand others throughout the land hold membership in labor organizations national in scope organized in accordance with the Act. By the provisions of said section they are not required to join the bargaining representative's union. Congress has not defined the term "National in Scope" but Congress has said in Section 151 Fifth (*infra* 14a) "nor shall the jurisdiction or powers of such employee organization (organized by their voluntary action) be in any way regarded as limited or defined by the provisions of this Act * * *"

The Congressional gift to employees to organize, join unions, and to bargain with their employers through representatives of their choosing, has been utilized in practice as a Trojan Horse, a gift destructive of the independence of the donees.

The Court in the Ninth Circuit has stated that their cause is not justiciable and is only within the jurisdiction of the National Adjustment Board.[5] The National Adjustment Board, on the other hand, has stated, "A decision in this case depends upon whether United Railroad Operating Crafts is a labor organization 'National in Scope.' So far as we are advised, there has been no final interpretation of the meaning of the words 'National in Scope' as used in the amendment to the Railroad Labor Act, by a tribunal of competent jurisdiction." And, then without benefit of a definition, holds against the employee, thusly, "Assuming the most liberal interpretation of the words 'National in Scope' in favor of the contention of fireman Hanson, it does not appear that United Railroad Operating Crafts meets the most meager requirements to qualify as such at this time."[6]

The Court in the Seventh Circuit was in conflict with the Sixth Circuit in principle but not in decision by misapplying 45 U. S. C. A. 153 First (f) and then holding that to be qualified as a union national in scope the union must participate in the Adjustment Board machinery, although an organization could have such status without so participating. That inasmuch as U. R. O. C. did not seek to participate in the selection of labor members of the Board, the matter can only be left for a decision of the Adjustment Board or System Board as the case may be.[7]

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[5] *U.R.O.C., et al. v. Northern Pacific Ry. Co.*, 208 F. 2nd 135.

[6] Exhibit A attached to petition for rehearing in the certified record in this cause.

[7] *United Railway Operating Crafts, et al. v. The Pennsylvania R. R. Co.*, 212 F. 2nd 938.

In the case at bar, the petitioners had a hearing before the System Adjustment Board,[8] resulting from a complaint initiated against them by a member of said board seeking their discharge. The court in a divided opinion, while recognizing the hostility or natural conflict in interest between a member of said board and the petitioners and their union, applied the provisions of 45 U. S. C. A. 153 (f) (*infra* 19a) to issues not involved in the case. Judge Allen in the dissenting opinion felt that the majority in its opinion by applying "the provisions of Sec. 153 to the simple but all important guarantees of Section 152 Eleventh on behalf of the employees, nullifies the Congressional intent and constitutes judicial legislation." And, by such holding, the Court has left a decision of a board with a member thereof "a representative of the adverse hostile appellee union which is endeavoring to have these appellants discharged from employment. Such a result contravenes the general rule that if the judge has a bias or conflict of interest, proceedings over which he presides are invalid. *Tumey v. State of Ohio*, 273 U. S. 510, 522."

The petitioners feel that their rights under the due process clause of the Fifth Amendment to the Constitution have been violated; that their rights under the Railway Labor Act have been abridged.

Petitioners respectfully submit that, contrary to the opinion of the Court below in the case at bar:

1. No dispute was involved with respect to any rival union desiring to participate in the selection of members to the National Adjustment Board or in its activities as would be required under Sec. 153 (f) in such a case.

2. No dispute was involved under a petition of United Railroad Operating Crafts (as distinguished from your

[8] Unlike the case at bar there was no hearing before an administrative board in the cases that reached the Seventh and Ninth Circuit Courts.

petitioners) as to whether it was or was not national in scope.

3. No dispute was involved falling within any of the provisions of Section 153 which covers the administrative procedure applicable to certain types of disputes specified therein and between different parties.

4. No dispute was involved concerning the interpretation or construction of a union shop agreement.

5. Nothing in Section 152 Eleventh authorizes any labor organization to initiate proceedings against an employee for the purpose of determining whether an employee is or is not in compliance with a union shop agreement.

6. That Section 153 (i) (*infra* 20a) makes no provision for a dispute between a labor organization and an employee.[9]

CONCLUSION

It is therefore respectfully requested that the petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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[9] In *Steele v. Louisville & Nashville Railroad Co.*, 323 U. S. 192-209, the Court said, Sec. 3 First (i) which provides for reference to the Adjustment Board "disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements, makes no reference to disputes between employees and their representatives." See *Brotherhood of Railroad Trainmen v. Howard*, 343 U. S. 768.

APPENDIX

APPENDIX

CAUSE ARGUED AND SUBMITTED

(December 6, 1954—Before: Allen, McAllister and Stewart, JJ.)

This cause is argued by William A. Rhodes for appellants and by Theodore Sachs for appellees and submitted to the Court.

JUDGMENT

(Filed March 4, 1955)

Appeal from the District Court of the United States for the Eastern District of Michigan.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Eastern District of Michigan, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of said District Court in this cause be and the same is hereby affirmed.

The above is an exact true copy as is set forth in the Certified Record on Petition for Certiorari, as submitted by the Clerk of the Court of Appeals.

OPINION

(Filed March 4, 1955)

No. 12143

UNITED STATES COURT OF APPEALS
For the Sixth Circuit

PAUL A. PIGOTT, EUGENE E. MURPHY, WILLIAM F. MENARD, FRANK R. McNABB, VINCENT W. BAUMIA, ERNEST E. LAMB, HAROLD HATCHER, JR., THOMAS R. HALL, PAUL EVANS, HENRY J. BARROW, and MILTON E. STONE,
Plaintiffs-Appellants,
v.
DETROIT, TOLEDO & IRONTON RAILROAD COMPANY, a Corporation, and BROTHERHOOD OF RAILROAD TRAINMEN,
Defendants-Appellees.

APPEAL from the United States District Court for the Eastern District of Michigan.

Decided March 4, 1955.

Before ALLEN, McALLISTER, and STEWART, Circuit Judges.

McALLISTER, Circuit Judge. Appellants, who are members of the United Railroad Operating Crafts, known as the UROC, filed their complaint against the Detroit, Toledo & Ironton Railroad Company for an injunction to restrain the company from discharging them from employment for having failed to comply with union membership in the Brotherhood of Railroad Trainmen. The complaint was filed after the Brotherhood had submitted charges to the company, setting forth that appellants had not become members of the Brotherhood and had not paid their dues to such organization. The complaint further set forth that a hearing was held before a "system adjustment board," consisting of a representative of the railroad and

a member of the Brotherhood, which was provided for in a union shop agreement entered into between the railroad company and the Brotherhood; that appellants appeared on the hearing in answer to the charges; and that they were afterward notified that their seniority and employment would terminate on September 22, 1952. In appellants' suit in the district court, the Brotherhood intervened as a defendant and filed a motion to dismiss the complaint. The district court granted the Brotherhood's motion on the ground that, because of the provisions of the Railway Labor Act, 45 U. S. C. A., Sections 151, et seq., the issues were within the province of the National Railway Adjustment Board, and the court had no jurisdiction to consider the matter. *Pigott* v. *Detroit, T. & I. R. Co.*, 116 F. Supp. 949.

On appeal, it is contended that the district court was in error in holding that it was without jurisdiction to consider and decide the matters in issue; and this contention is based upon the district court's interpretation of the provisions of the Railway Labor Act and its application to the facts in this case.

The Brotherhood is admittedly the bargaining representative of certain crafts and classes of employees of the railway company, as authorized by the provisions of the Railway Labor Act, 45 U. S. C. A., Section 152, Fourth. As such bargaining representative, the Brotherhood entered into a union shop agreement with the railroad, pursuant to Section 152, Eleventh, of the Act, in which it was provided that all employees of the crafts and classes represented by the Brotherhood should become members of the Brotherhood within sixty days after their employment or after the effective date of the agreement, whichever was later. Appellants are members of the crafts and classes represented by the Brotherhood in the union shop agreement.

The Act excepts from the necessity of joining the bargaining representatives (in this case, the Brotherhood) all those employees who belong to another labor organization, "national in scope" and "organized in accordance with

this chapter." 45 U. S. C. A., Section 152, Eleventh (c). Accordingly, as required by the statute, the union shop agreement also excepted from the necessity of joining the Brotherhood all those employees who belonged to another labor organization "national in scope" and "organized in accordance with" the Act.

Appellants, as members of the UROC, claimed that under the Act and under the union shop agreement executed pursuant thereto, they are exempted from joining the Brotherhood for the reason that they are members of another union "national in scope" and "organized in accordance with the Act." It is conceded that the UROC is organized in accordance with the Act. The "system adjustment board," established by the union's shop agreement to adjudicate disputes arising thereunder, held, however, that appellants had acknowledged their nonmembership in the Brotherhood but had failed to present evidence establishing that their membership in the UROC was membership in a labor organization national in scope. It was in the face of this holding that appellants filed their complaint to forestall their imminent discharge; petitioned the court for a declaratory judgment that the UROC was a labor organization "national in scope"; and further asked that the railroad be enjoined from discharging them from employment, all of which was denied by the district court when it dismissed the complaint.

The Railway Labor Act, in providing for union shop agreements in 45 U. S. C. A., Section 152, Eleventh, nevertheless, makes no provision for ascertaining whether or not a labor organization is national in scope; nor is any procedure provided in said section whereby employees of a union may avail themselves of the exception to joining the bargaining organization on the ground that their union is national in scope. The section of the Railway Labor Act relating to union shop agreements, in making an exception to the necessity of joining the bargaining organization, sets forth only that members of a labor organization are excepted from joining a bargaining organization if their organization is "national in

scope." How, then, is it to be ascertained whether such an organization is national in scope?

Appellants say that they will be deprived of due process of law if they are bound by the decision of the "system adjustment board" provided for in the union shop agreement in this case, since their rights would thus be determined by a tribunal composed of two members—one, from the railway, and the other, from the Brotherhood, which is the party here seeking to bring about their discharge from employment; and it is submitted that in accordance with due process of law, appellants' rights are not to be determined by persons who are partial or biased, or where a conflict of interest makes such persons incompetent.

Is there no fair way, then, under the provisions of the Railway Labor Act, by which it can be determined, in an impartial and equitable manner, whether a labor organization is "national in scope"? The district court found such a method under the provisions of Section 153 of the Act. These provisions, however, relate to the establishment of the National Railroad Adjustment Board, the manner in which the members thereof are to be selected, and the decision of disputes as to the right of any national labor organization to participate in the selection of the labor members of the Board. It is provided in this section of the Act [45 U. S. C. A., Section 153, First (a)] that half of the members of the National Railroad Adjustment Board shall be selected by the carriers, and half, "by such labor organizations of the employees, national in scope, as have been or may be organized in accordance with the provisions of Section 152 of this title."

As above stated in the Act, the labor organizations entitled to select members of the National Railroad Adjustment Board are limited to those "national in scope." The Act further provides, in case a dispute arises as to the right of any labor organization to participate in the selection and designation of the labor members of the National Railroad Adjustment Board, that the Secretary of Labor shall investigate the claim of the labor organization con-

tending that it has a right so to participate, and if such claim, in the judgment of the Secretary of Labor, has merit, the Secretary shall notify the Mediation Board accordingly, and within ten days after receipt of such advice, the Mediation Board shall request those national labor organizations theretofore duly qualified to participate in the selection and designation of the labor members of the Adjustment Board to select a representative. "Such representative, together with a representative likewise designated by the claimant, and a third or neutral party designated by the Mediation Board, constituting a board of three, shall within thirty days after the appointment of the neutral member, investigate the claims of the labor organization desiring participation and decide whether or not it was organized in accordance with section 152 of this title and is otherwise properly qualified to participate in the selection of the labor members of the Adjustment Board, and the findings of such boards of three shall be final and binding." 45 U. S. C. A., Section 153, First (f).

There is no question that the above procedure provided by the Act insures a fair determination, by a three-member board, of the question as to the right of a labor organization to participate in the selection of the labor members of the National Railroad Adjustment Board. But appellants contend that Section 153, First (f), of the Railway Labor Act provides machinery for determining whether a labor organization is "national in scope" in order that it be qualified to participate in selecting members of the National Railroad Adjustment Board, and that such section has no application to the determination whether a labor organization is "national in scope" within the union shop provision of the Act set forth in Section 152, Eleventh. Appellants declare that the UROC is not interested in selecting members of the National Railroad Adjustment Board, and that such union is not obliged to assert the right to participate in such selection to secure a determination from the three-man Board provided for in that Section, as to whether it is a labor organization "national in scope," in order to entitle it to the exemption from joining the Brotherhood as a labor organization "national in scope" under the union shop section of the Act.

But we are of the opinion that appellants are not denied due process of law where there is the right to secure a fair determination whether their labor organization is "national in scope" available to them, or, rather, to such labor organization, even though the administrative machinery for making such determination must be availed of in proceedings under the Act to qualify for the right to select members of the National Railroad Adjustment Board. The concept whether a labor organization is "national in scope" is well suited to administrative definition under the Railway Labor Act by the National Railroad Adjustment Board, a body familiar with the industry. As above mentioned, there is available under the Act administrative machinery, if its use were desired by the UROC, to determine whether that labor organization is "national in scope"; and the determination by the three-man Board, in a proceeding to determine whether the UROC were "national in scope" and thereby had the right to select members of the National Railroad Adjustment Board, would be conclusive, and have a prospective, universal application, not only with respect to selection of labor members of the Board, but also to the provision exempting such labor organizations from the necessity of joining the bargaining representative. *United Railroad Operating Crafts* v. *Pennsylvania R. Co.*, 212 F. (2d) 938 (C. A. 7). As Judge Levin observed in his able and comprehensive opinion in the district court in this case, a labor organization cannot, of course, resort to the specific administrative machinery relating to the selection of members of the National Railroad Adjustment Board for the limited purpose of establishing that its members are entitled to the exception to the union shop requirement. The effect of the provisions for participation by a union in the Adjustment Board machinery, as stated by Judge Levin, "is that a labor organization, desirous of qualifying for the exception to the union shop requirement, must also participate in the adjustment board machinery before it can obtain the required stamp of approval" as an organization "national in scope." In providing for the selection of labor members of the National Railroad Adjustment Board by

labor organizations "national in scope," Congress provided machinery to determine, in case of dispute, whether such a union be "national in scope." In enacting the subsequent amendment to the Act providing that members of a union, national in scope, are exempt from joining another union which had been selected as bargaining representative, there seems evident the intention on the part of Congress that before a union were entitled to be exempt from the necessity of joining the bargaining representative as an organization "national in scope," it must have participated in the Adjustment Board machinery, and have been there recognized as an organization "national in scope." As stated by Judge Levin, it is only by insisting on such participation that a clear and concrete standard is available to guide all interested parties as to the status of a labor organization, and further: "This result is consonant with the intention of the drafters of the union shop amendment that a labor organization shall not be entitled to enlist employees on the basis of the privileged standing accorded to qualified unions in Section 152, Eleventh until it has assumed its fair share of the burdens and responsibilities attendant upon the administration of the Act" including the considerable financial burden required of the labor organizations participating in the administrative machinery of the Railway Labor Act. "Thus, a labor organization must exert itself, at least to the extent of participation in the adjustment board machinery, before it is so entitled." *Pigott* v. *Detroit, T. & I. R. Co.*, 116 F. Supp. 949 (D. C. Mich.).

The question whether appellants' union, the UROC, was "national in scope," within the meaning of the union shop agreement entered into between the Brotherhood and the railroad, was an issue solely within the province of the National Railroad Adjustment Board, or, in this case, the system board of adjustment, established in accordance with Section 153, Second, of the Act. *United Railroad Operating Crafts* v. *Pennsylvania R. Co., supra; United Railroad Operating Crafts* v. *Northern Pacific Ry. Co.*, 208 F. (2d) 135 (C. A. 9); *Alabaugh* v. *B. & O. Railroad Co.*, 125 F. Supp. 401 (D. C. Md.). In *Bohnen* v. *B. & O.*

Chicago Terminal R. Co. & Brotherhood of Railway Trainmen, 125 F. Supp. 463 (D. C. Ind.), where the Brotherhood and the railroad had entered into a union shop agreement requiring employees to become members of the Brotherhood or other unions, national in scope and organized in accordance with the Railway Labor Act, members of the UROC brought suit to enjoin their threatened discharge by the railroad, based on the ground that they did not belong to the Brotherhood. In holding that the district court had no jurisdiction in the case and that the controversy was entirely within the province of the Board, Judge Swygert said: "When the provisions of the agreement are taken into consideration it seems clear that what the plaintiffs are complaining about is conduct of the Brotherhood and the defendant railroad which they say is not in accordance with the terms of the contract. In other words, it is a dispute growing out of an interpretation or application of an agreement concerning working conditions and therefore is the kind of dispute which must be brought before Adjustment Board under Section 3 of the Act for settlement." To the same effect see *Johns* v. *Baltimore & O. R. Co.*, 118 F. Supp. 317 (D. C. Ill.); *United Railroad Operating Crafts* v. *Wyer*, 115 F. Supp. 359 (D. C. N. Y.), affirmed, 205 F. (2d) 153 (C. A. 2); *Alabaugh* v. *B. & O. Railroad Co., supra.*

In conclusion, it may be said that "it is apparent from the scheme of the Act that an organization held qualified . . . to participate in the selection of Board members would also be held national in scope within the meaning of the union shop amendment." *United Railroad Operating Crafts* v. *Pennsylvania R. Co.*, 212 F. (2d) 938, 943 (C. A. 7). "With the benefit of such a standard, no employee need risk his seniority or his job by having to join a labor organization first and then to wait for an adjustment board or court proceeding before the status of such rival labor organization is adjudicated." *Pigott* v. *Detroit, T. & I. R. Co.*, 116 F. Supp. 949, 956 (D. C. Mich.). "There is, as we have indicated, a natural conflict of interest between UROC and the labor representatives on the

Board. However, there is available under the Act administrative machinery to obviate the possible disadvantage to which that conflict might subject these employees, if its use were desired by UROC." *United Railroad Operating Crafts* v. *Pennsylvania R. Co., supra,* page 942. "In the instant case, the plaintiffs should either have insisted that UROC establish its status in the prescribed fashion or have protected their interests by joining the Brotherhood." *Pigott* v. *Detroit, T. & I. R. Co., supra* page 956. "UROC has never sought the right to participate in the selection of labor members of the Board. Therefore, its status, whether national in scope or not, has never been so determined. Under the circumstances, the matter can only be left to the Adjustment Board, or a System Board as the case may be, in each dispute involving that question." *United Railroad Operating Crafts* v. *Pennsylvania R. Co., supra,* page 943.

With respect to various arguments of counsel for appellants attacking the constitutionality of the provisions of the Railway Labor Act and procedures thereunder, we are of the view that no substantial constitutional question is presented on this appeal. See *Shelly* v. *Kraemer,* 334 U. S. 1, 8; *Duignan* v. *United Etates,* 274 U. S. 195, 200; *Johns* v. *Baltimore & O. R. Co.,* 118 F. Supp. 317, 322 (D. C. Ill.). Moreover, there was no abuse of discretion on the part of the district court in refusing to grant a motion to raise the question of the unconstitutionality of the statute and to request the convening of a three-judge court to determine such question, where the motion was not made until after the court had reached its decision.

In accordance with the foregoing, the judgment of the district court dismissing the complaint for want of jurisdiction is affirmed upon the opinion of Judge Levin.

ALLEN, Circuit Judge, dissenting. I regret that I cannot agree with my colleagues. I see no answer to the proposition that the majority opinion recognizes and the judgment leaves in effect the decision of a system adjustment board, a two member tribunal, one member representing the railway, and one member a representative of

the adverse and hostile appellee union which is endeavoring to have these appellants discharged from their employment. Such a result contravenes the general rule that if the judge has a bias or conflict of interest, proceedings over which he presides are invalid. *Tumey* v. *State of Ohio,* 273 U. S. 510, 522.

45 U. S. Code, Section 153, First, provides administrative machinery for adjusting relations between the unions and management. It does not provide for the right of the employee to retain his job if he is a member of a labor organization "national in scope" and "organized in accordance with the Act." That situation is covered in Section 152, Eleventh. To apply the technical administrative provisions of Section 153, First, relating to unions and management, to the simple but all-important guaranties of Section 152, Eleventh, on behalf of the employee, nullifies the Congressional intent and constitutes judicial legislation.

The question here is not how the National Railroad Adjustment Board shall be constituted nor whether the appellant union shall have a representative on the National Railroad Adjustment Board which is the general subject of Section 153, First. The question here is whether appellants shall be deprived of their livelihood. Their right not to be deprived of it if UROC comes within the classification of Section 152, Eleventh (c) is a valid statutory right falling within the general jurisdiction of the federal court under title 28, Section 1331. The case certainly arises under a law of the United States. It is a right which should be protected by the examination of a court free from bias or conflict in interest and safeguarded by judicial procedure.

It has recently been held that a federal court is empowered to determine whether a labor organization is "a national or international organization." An administrative tribunal had held that the organization in question did not fall within the purview of the statutory phrase, but the Supreme Court affirmed a federal court decision which determined otherwise. *N. L. R. B.* v. *Highland Park Mfg.*

Co., 341 U. S. 322. It is equally appropriate for a federal court to determine whether a labor organization is "national in scope.' The expertise demanded in one case is no greater than in the other. If Congress intended the geographic adjectives to have other than their ordinary civil meaning it would have given them a special meaning by definition. *N. L. R. B.* v. *Highland Park Mfg. Co., supra.*

The District Court should hear the evidence, construe the meaning of the statutory phrases "national in scope," and "organized in accordance with the Act," and determine whether UROC comes within that classification.

ORDER DENYING REHEARING

(Filed March 31, 1955)

After due consideration of the matter set forth in appellants' petition for rehearing, it is ordered, adjudged, and decreed that the petition for rehearing be and the same is hereby denied.

Judge Allen thinks the petition for rehearing should be allowed.

The above is an exact true copy as is set forth in the Certified Record on Petition for Certiorari, as submitted by the Clerk of the Court of Appeals.

Provisions of

CONSTITUTION

and

STATUTES

PERTINENT PROVISIONS OF THE CONSTITUTION AND STATUTES INVOLVED

ARTICLE V Amendment to Constitution of the United States

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use, without just compensation.

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TITLE 28 U. S. C. A. Sec. 1331

The district courts shall have original jurisdiction of all civil actions wherein the mater in controversy exceeds the sum or value of $3000.00, exclusive of interest and costs, and arises under the Constitution, laws or treaties of the United States.

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TITLE 28 U. S. C. A. Sec. 1332

The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $3000.00, exclusive of interest and costs, and is between:

(1) Citizens of different States;

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TITLE 28 U. S. C. A. Sec. 1337

The district courts shall have original jurisdiction of any civil action or proceeding arising under any Act of Congress regulating commerce or protecting trade and commerce against restraints and monopolies.

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RAILWAY LABOR ACT:—TITLE 45 U. S. C. A. Sections 151 et seq.

Sec. 151. When used in this Act and for the purposes of this Act—

Fifth. The term "employee" as used herein includes every person in the service of a carrier (subject to its continuing authority to supervise and direct the manner of rendition of his service) who performs any work defined as that of an employee or subordinate official in the orders of the Interstate Commerce Commission now in effect, and as the same may be amended or interpreted by orders hereafter entered by the Commission pursuant to the authority which is hereby conferred upon it to enter orders amending or interpreting such existing orders: Provided, however, That no occupational classification made by order of the Interstate Commerce Commission shall be construed to define the crafts according to which railway employees may be organized by their voluntary action, **nor shall the jurisdiction or powers of such employee organizations be regarded as in any way limited or defined by the provisions of this act** or by the orders of the Commission. The term "employee" shall not include any individual while such individual is engaged in the physical operations consisting of the mining of coal, the preparation of coal, the handling (other than movement by rail with standard locomotives) of coal not beyond the mine tipple, or the loading of coal at the tipple.

Sixth. The term "representative" means any person or persons, labor union, organization or corporation designated either by a carrier or group of carriers or by its or their employees to act for it or them.

* * * * *

Emphasis supplied.

Sec. 151(a)—GENERAL PURPOSES—

(1) To avoid any interruption to commerce or to the operation of any carrier engaged therein: (2) **to forbid any limitation upon freedom of association among employees or any denial, as a condition of employment or otherwise, of the right of employees to join a labor organization;** (3) **to provide for the complete independence of carriers and of employees in the matter of self-organization;** (4) to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions; (5) to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions.

Sec. 152—GENERAL DUTIES

First. It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof.

Third. Representatives, for the purposes of this act, shall be designated by the respective parties without interference, influence, or coercion by either party over the designation of representatives by the other; and neither party shall in any way interfere with, influence, or coerce the other in its choice of representatives. Representatives of employees for the purposes of this act need not be persons in the employ of the carrier, and no carrier shall, by interference, influence, or coercion seek in any manner to prevent the designation by its employees as their representatives of those who or which are not employees of the carrier.

Emphasis supplied.

Fourth. Employees shall have the right to organize and bargain collectively through representatives of their own choosing. The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this Act. **No carrier, its officers or agents, shall deny or in any way question the right of its employees to join, organize, or assist in organizing the labor organization of their choice, and it shall be unlawful for any carrier to interfere in any way with the organization of its employees, or to use the funds of the carrier in maintaining or assisting or contributing to any labor organization, labor representative, or other agency of collective bargaining, or in performing any work therefor, or to influence or coerce employees in an effort to induce them to join or remain or not to join or remain members of any labor organization or to deduct from the wages of employees any dues, fees, assessments, or other contributions payable to labor organizations, or to collect or to assist in the collection of any such dues, fees, assessments, or other contributions** * * *.

Fifth. No carrier, it officers, or agents shall require any person **seeking employment** to sign any contract or agreement promising to join or not to join a labor organization; and if any such contract has been enforced prior to the effective date of this Act, then such carrier shall notify the employees by an appropriate order that such contract has been discarded and is no longer binding on them in any way.

* * * * *

Eleventh. Notwithstanding any other provisions of this Act, or of any other statute or law of the United States, or Territory thereof, or of any State, any carrier or carriers as defined in this Act and a labor organization or labor organizations duly designated and authorized to represent employees in accordance with the requirements of this Act shall be permitted—

(a) to make agreements, requiring, as a condition of continued employment, that within sixty days following the be-

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Emphasis supplied.

ginning of such employment, or the effective date of such agreements, whichever is the later, all employees shall become members of the labor organization representing their craft or class: *Provided,* That no such agreement shall require such condition of employment with respect to employees to whom membership is not available upon the same terms and conditions as are generally applicable to any other member or with respect to employees to whom membership was denied or terminated for any reason other than the failure of the employee to tender the periodic dues, initiation fees, and assessments (not including fines and penalties) uniformly required as a condition of acquiring or retaining membership.

(b) to make agreements providing for the deduction by such carrier or carriers from the wages of its or their employees in a craft or class and payment to the labor organization representing the craft or class of such employees, of any periodic dues, initiation fees, and assessments (not including fines and penalties) uniformly required as a condition of acquiring or retaining membership: *Provided,* That no such agreement shall be effective with respect to any individual employee until he shall have furnished the employer with a written assignment to the labor organization of such membership dues, initiation fees, and assessments, which shall be revocable in writing after the expiration of one year or upon the termination date of the applicable collective agreement, whichever occurs sooner.

(c) The requirement of membership in a labor organization in an agreement made pursuant to subparagraph (a) shall be satisfied, as to both a present or future employee in engine, train, yard, or hostling service, that is, an employee engaged in any of the services or capacities covered in section 3, First (h) of this Act defining the jurisdictional scope of the First Division of the National Railroad Adjustment Board, if said employee shall hold or acquire membership in any one of the labor organizations, national in scope, organized in accordance with this

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Emphasis supplied.

Act and admitting to membership employees of a craft or class in any of said services; and no agreement made pursuant to subparagraph (b) shall provide for deductions from his wages for periodic dues, initiation fees, or assessments payable to any labor organization other than that in which he holds membership: *Provided, however,* That as to an employee in any of said services on a particular carrier at the effective date of any such agreement on a carrier, who is not a member of any one of the labor organizations, national in scope, organized in accordance with this Act and admitting to membership employees of a craft or class in any of said services such employee, as a condition of continuing his employment, may be required to become a member of the organization representing the craft in which he is employed on the effective date of the first agreement applicable to him: *Provided, further,* **That nothing herein or in any such agreement or agreements shall prevent an employee from changing membership from one organization to another organization admitting to membership employees of a craft or class in any of said services.**

(d) Any provisions in paragraphs Fourth and Fifth of section 2 of this Act in conflict herewith are to the extent of such conflict amended.

Sec. 153. NATIONAL BOARD OF ADJUSTMENT—GRIEVANCES—INTERPRETATION OF AGREEMENTS

First. There is hereby established a Board, to be known as the "National Railroad Adjustment Board," the members of which shall be selected within thirty days after approval of this Act, and it is hereby provided—

(a) That the said Adjustment Board shall consist of thirty-six members, eighteen of whom shall be selected by the carriers and eighteen by such labor organizations of the employees, national in scope, as have been **or may be organized** in accordance with the provisions of section 2 of this Act.

Emphasis supplied.

(b) The carriers, acting each through its board of directors or its receiver or receivers, trustee or trustees, or through an officer or officers designated for that purpose by such board, trustee or trustees, or receiver or receivers, shall prescribe the rules under which its representatives shall be selected and shall select the representatives of the carriers on the Adjustment Board and designate the division on which each such representative shall serve, but no carrier or system of carriers shall have more than one representative on any division of the Board.

(c) The national labor organizations as defined in paragraph (a) of this section, acting each through the chief executive or other medium designated by the organization or association thereof, shall prescribe the rules under which the labor members of the Adjustment Board shall be selected and shall select such members and designate the division on which each member shall serve; but no labor organization shall have more than one representative on any division of the Board.

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(f) In the event a dispute arises as to the right of any national labor organization to participate as per paragraph (c) of this section in the selection and designation of the labor members of the Adjustment Board, the Secretary of Labor shall investigate the claim of such labor organization to participate, and if such claim in the judgment of the Secretary of Labor has merit, the Secretary shall notify the Mediation Board accordingly, and within ten days after receipt of such advice the Mediation Board shall request those national labor orzanizations duly qualified as per paragraph (c) of this section to participate in the selection and designation of the labor members of the Adjustment Board to select a representative. Such representative, together with a representative likewise designated by the claimant, and a third or neutral party designated by the Mediation Board, constituting a board of three, shall within thirty days after the appointment of the neutral member investigate the claims of the labor organization desiring participa-

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Emphasis supplied.

tion and decide whether or not it was organized in accordance with section 2 hereof and is otherwise properly qualified to participate in the selection of the labor members of the Adjustment Board, and the findings of such boards of three shall be final and binding.

(g) Each member of the Adjustment Board shall be compensated by the party or parties he is to represent. Each third or neutral party selected under the provisions of (f) of this section shall receive from the Mediation Board such compensation as the Mediation Board may fix, together with his necessary traveling expenses and expenses actually incurred for subsistence, or per diem allowance in lieu thereof, subject to the provisions of law applicable thereto, while serving as such third or neutral party.

(h) The said Adjustment Board shall be composed of four divisions, whose proceedings shall be independent of one another, and the said divisions as well as the number of their members shall be as follows:

First division: To have jurisdiction over disputes involving train- and yard-service employees of carriers; that is, engineers, firemen, hostlers, and outside hostler helpers, conductors, trainmen, and yard-service employees. This division shall consist of ten members, five of whom shall be selected and designated by the carriers and five of whom shall be selected and designated by the national labor organizations of the employees.

* * * * *

(i) The disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on the date of approval of this Act, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the

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Emphasis supplied.

disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes.

(j) Parties may be heard either in person, by counsel, or by other representatives, as they may respectively elect, and the several divisions of the Adjustment Board shall give due notice of all hearings to the employee or employees and the carrier or carriers involved in any disputes submitted to them.

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(m) The awards of the several divisions of the Adjustment Board shall be stated in writing. A copy of the awards shall be furnished to the respective parties to the controversy, and the awards shall be final and binding upon both parties to the dispute, except in so far as they shall contain a money award. In case a dispute arises involving an interpretation of the award the division of the Board upon request of either party shall interpret the award in the light of the dispute.

(n) A majority vote of all members of the division of the Adjustment Board shall be competent to make an award with respect to any dispute submitted to it.

(o) In case of an award by any division of the Adjustment Board in favor of petitioner, the division of the Board shall make an order, directed to the carrier, to make the award effective and, if the award includes a requirement for the payment of money, to pay the employee the sum to which he is entitled under the award on or before a day named.

(p) If a carrier does not comply with an order of a division of the Adjustment Board within the time limit in such order, the petitioner, or any person for whose benefit such order was made, may file in the District Court of the United States for the district in which he resides or in

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Emphasis supplied.

which is located the principal operating office of the carrier, or through which the carrier operates, a petition setting forth briefly the causes for which he claims relief, and the order of the division of the Adjustment Board in the premises. Such suit in the District Court of the United States shall proceed in all respects as other civil suits, except that on the trial of such suit the findings and order of the division of the Adjustment Board shall be prima facie evidence of the facts therein stated, and except that the petitioner shall not be liable for costs in the district court nor for costs at any subsequent stage of the proceedings, unless they accrue upon his appeal, and such costs shall be paid out of the appropriation for the expenses of the courts of the United States. If the petitioner shall finally prevail he shall be allowed a reasonable attorney's fee, to be taxed and collected as a part of the costs of the suit. The district courts are empowered, under the rules of the court governing actions at law, to make such order and enter such judgment, by writ of mandamus or otherwise, as may be appropriate to enforce or set aside the order of the division of the Adjustment Board.

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Second. Nothing in this section shall be construed to prevent any individual carrier, system, or group of carriers and any class or classes of its or their employees, all acting through their representatives, selected in accordance with the provisions of this Act, from mutually agreeing to the establishment of system, group or regional boards of adjustment for the purpose of adjusting and deciding disputes of the character specified in this section. In the event that either party to such a system, group, or regional board of adjustment is dissatisfied with such arrangement, it may upon ninety days' notice to the other party elect to come under the jurisdiction of the Adjustment Board.

Emphasis supplied.